IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2748 OF 2006

Shankar Bajirao Kudale .. Applicant
Versus
State of Maharashtra .. Respondent

Mr.S.S.Kulkarni for applicant
Mr.S.Hingorani, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 16th August 2006

P.C.

. Heard Mr.Kulkarni for applicant and learned A.P.P. for prosecution. Perused annexures to the application as also copy of Chemical Analysis report which was sought for by the learned A.P.P. on the last occasion.

2. It is not disputed before me that the other accused are on regular bail and enlarged so

by the learned Magistrate.

3. The offences alleged in this case are punishable under section 328 of I.P.C. and 65(f) of Bombay Prohibition Act, 1949. It appears from the record that other persons arrested including the truck driver have been enlarged on bail. Since the allegation is that the consignment was delivered at the instance of the present applicant, learned A.P.P. sought time to produce C.A. report. Copy of report discloses that no Ethyl Alcohol is detected in samples 1 to 4.

4. In the view of the trial learned Judge deciding the anticipatory bail application, the ingrediants of section 328 of I.P.C. are not made out. However, he was of the opinion then that section 65(f) of Bombay Prohibition Act would be attracted and for that purpose the above exercise was permitted to be carried out by this Court.

5. In my view, the entire consignment having been siezed together with relevant documents and other accused having been enlarged on bail, so also, the applicant being a permanent resident of village Yavat and carrying on business of grocery shop there, this is a fit case for enlarging him on bail in the event of his arrest in the subject offence. Mr.Kulkarni upon taking instructions has made a statement that the applicant is not in the business of manufacture and sale of liquor and his only business is grocery shop along with agricultural operations in the village.

6. In these circumstances and when the applicant is willing to cooperate with the investigation, this is a fit case where the anticipatory bail application of the applicant deserves to be granted. Accordingly following order:-

i) In the event of the arrest of the applicant in connection with 128 of 2006 registered with Yavat Police Station, the applicant shall be enlarged on bail in the sum of Rs.20,000/- with one or two local sureties in the like amount.

ii) The bail is granted subject to condition that the applicant will attend the Yavat police station once a week during 1.00 p.m.and 3.00 p.m.

iii) Bail is granted subject to condition that the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the police officer/

investigating agency. The applicant shall not tamper with the prosecution evidence.

iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial

v) This order will enure to the benefit of the applicant only till charge sheet is filed. Thereafter, he will be free to apply to the appropriate court for appropriate relief.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

(S.C.DHARMADHIKARI, J)